



January 17, 2023

Ms. Donna Ferebee
Department of Finance
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Ms. Jennifer Fordyce
State Water Resources Control Board
1001 I Street, 22nd Floor
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Notice of Postponement of Hearing

*California Regional Water Quality Control Board, Santa Ana Region,
Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and, XVIII, 09-TC-03
Santa Ana Regional Water Quality Control Board, Resolution No. R8-2009-0030,
adopted May 22, 2009*

*County of Orange, Orange County Flood Control District; and the Cities of Anaheim,
Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach,
Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach, and Villa Park, Claimants*

Dear Ms. Ferebee and Ms. Fordyce:

On January 13, 2023, the Commission on State Mandates (Commission) received the Santa Ana Regional Water Quality Control Board's and the State Water Resources Control Board's (collectively, "the Water Boards") and Department of Finance's (Finance's) requests for postponement of the hearing on the above-captioned Test Claim, currently set for January 27, 2023.

Specifically, both Finance and the Water Boards argue that good cause exists for the postponement of the hearing under section 1187.9(b)(1)(E) and (F) of the Commission's regulations. First, they note that the Proposed Decision for this matter that was issued "only yesterday"¹ (January 12, 2023), includes significant, substantive changes from the Draft Proposed Decision issued in August of 2022. Second, they state that in addition to a new conclusion that the Test Claim should be partially approved, which is a reversal of the prior conclusion that the Test Claim should be denied, there are more than 70 additional pages of new analysis that constitutes a significant, unanticipated change in the status of the matter and as a result, the matter is not ready for hearing. Third, they assert that this matter raises numerous and complex issues and the parties have been given an extremely limited period of time to review this new conclusion and analysis in advance of the scheduled hearing date, with barely 10 business days prior to the hearing, there is insufficient time to properly analyze the merits of the analysis and conclusions of this new, significantly changed version of the Decision, and to prepare to testify before the Commission. Fourth, Finance states that the parties have been given an extremely limited period of time to review this new analysis in advance of the scheduled hearing date, with barely 10 business days prior to the hearing, there is insufficient time to properly analyze the merits of the analysis and conclusions of this new, significantly changed

¹ Water Boards' Request for Postponement of Hearing, filed January 13, 2023; Finance's Request for Postponement of Hearing, filed January 13, 2023.

version of the Decision, and to prepare to testify before the Commission.² Fifth both Finance and the Water Boards state that the parties have not been given an opportunity to file written comments on this new Proposed Decision with its new analysis and findings. Sixth, both Finance and the Water Boards state they recognize that postponements are disfavored under the Commission's regulations and understand the importance of expediting all matters. Finally, the requests state that given the number and complexity of the issues, the new analysis, conclusions and possibly new evidence to consider, together with the proximity of the hearing date, and the fact that several important issues in this Decision are also at issue in the pending petition for review with the California Supreme Court in *Department of Finance v. Commission on State Mandates*, Case No. S277832, that good cause exists for the postponement of the hearing to the next regularly scheduled hearing on March 24, 2023.

Section 1187.9(b) of the Commission's regulations provide that while postponements are disfavored and pursuant to Government Code section 17530, the executive director has a duty to expedite all matters before the Commission, a request for postponement filed by an interested party may be approved for good cause. (Cal. Code. Regs., tit. 2 § 1187.9(b)(3)(D).) Circumstances that may indicate good cause include the number and complexity of the issues. (Cal. Code. Regs., tit. 2 § 1187.9 (b)(1)(F).)

However, there is no additional written comment period allowed under the Commission's governing statutes and regulations. A draft proposed decision is required to be issued at least eight weeks before the hearing, or by December 2, 2022 in the case of a January 27, 2023 hearing. The Draft Proposed Decision in this case was issued on August 17, 2022. Once issued, comments and evidence may be filed on the draft proposed decision. Section 1183.6 of the Commission's regulations states the following:

- (a) Before the hearing on the test claim, Commission staff shall prepare a proposed decision for the test claim, which shall include but not be limited to a review of the written comments filed. The proposed decision shall describe and analyze the test claim to assist the Commission in determining whether the alleged statutes or executive orders contain a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.
- (b) At least eight weeks before the hearing, or at a time required by the executive director or stipulated to by the parties, Commission staff shall prepare a draft proposed decision and distribute it to the parties, interested parties, and those on the mailing list described in section 1181.3 of these regulations, and shall post it on the Commission's website.
- (c) Anyone may file written comments concerning the draft proposed decision. If representations of fact are made, they shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of these regulations. Written comments shall be certified, filed, and served in accordance with section 1181.3 of these regulations, by the date determined and noticed by the executive director. A three-week period for comments shall be given, subject to the executive director's authority to expedite all matters pursuant to Government

² Finance's Request for Postponement of Hearing, filed January 13, 2023.

Ms. Ferebee and Ms. Fordyce

January 17, 2023

Page 3

Code section 17530. All written comments timely filed shall be reviewed by Commission staff and may be incorporated into the proposed decision for the test claim.

(d) It is the Commission's policy to discourage the introduction of late comments, exhibits, or other evidence filed after the three-week comment period described in subdivision (c) of this section. The Commission need not rely on, and staff need not respond to, late comments, exhibits, or other evidence filed in response to a draft proposed decision after the comment period.

Thus, there are no additional written comment periods allowed under the Commission's regulations following the issuance of the proposed decision. In accordance with section 1183.6(d) of the Commission's regulations, the proposed decision responds to the comments and any additional evidence filed and, thus, changes to the proposed decision are expected and routine. This case is no different. As a matter of Commission practice, the proposed decision is issued to the parties and Commission members approximately 10 days before the hearing, and in this case, was issued on January 12, 2023, more than two weeks before the January 27, 2023 hearing. Any additional comments can be made at the hearing. Section 1187.6 of the Commission's regulations provides that the parties may submit their arguments to the Commission at the hearing on the matter as follows: "Each party shall have the right to present witnesses, to introduce exhibits, and to propose to the chairperson questions for opposing witnesses in support or rebuttal of any matter relevant to the issues even if that matter was not covered in the direct examination."

Although all due process has been provided to the parties in this case and there is no further comment period allowed, it is acknowledged that the Proposed Decision is exceptionally long and addresses several complex issues. Therefore the need for additional time to review, analyze, and prepare to testify at the hearing provides good cause for a postponement to the next regularly scheduled hearing.

Therefore, a postponement of hearing to the next regularly scheduled hearing is approved. This matter is now set for hearing on Friday, **March 24, 2023**.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 17, 2023, I served the:

- **Notice of Postponement of Hearing issued January 17, 2023**
- **Finance's Request for Postponement of Hearing filed January 13, 2023**
- **Water Boards' Request for Postponement of Hearing filed January 13, 2023**

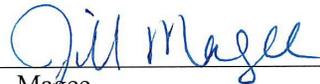
*California Regional Water Quality Control Board, Santa Ana Region,
Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and, XVIII, Adopted
May 22, 2009, 09-TC-03*

Santa Ana Regional Water Quality Control Board, Resolution No. R8-2009-0030,
adopted May 22, 2009

County of Orange, Orange County Flood Control District; and the Cities of Anaheim,
Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach,
Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach, and Villa Park, Claimants

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 17, 2023 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/12/23

Claim Number: 09-TC-03

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Claimants: City of Anaheim
City of Brea
City of Buena Park
City of Costa Mesa
City of Cypress
City of Fountain Valley
City of Fullerton
City of Huntington Beach
City of Irvine
City of Lake Forest
City of Newport Beach
City of Placentia
City of Seal Beach
City of Villa Park
County of Orange
Orange County Flood Control District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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